## FIRST AMENDMENT TO THE INDIANA TOLL ROAD CONCESSION AND LEASE AGREEMENT

This First Amendment to the Indiana Toll Road Concession and Lease Agreement (this "First Amendment") is made and entered into, as of this 12<sup>th</sup> day of April, 2006, by and between the Indiana Finance Authority, a public body politic and corporate of the State of Indiana (the "IFA") and ITR Concession Company LLC, a Delaware limited liability company (the "Concessionaire").

#### RECITALS

**WHEREAS**, the IFA and the Concessionaire are parties to that certain Indiana Toll Road Concession and Lease Agreement of even date herewith (the "Concession Agreement");

WHEREAS, the parties desire to the amend the Concession Agreement as set forth herein; and

WHEREAS, all capitalized terms used in this First Amendment but not otherwise defined herein shall have the respective meanings given to such terms in the Concession Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained herein and in the Concession Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound, hereby agree as follows:

**SECTION 1.** Section 1.1 of the Concession Agreement is hereby amended by inserting the following new definitions in said Section in alphabetical order:

"Class 2 Users" means any vehicle with two (2) axles, including motorcycles.

"Commuter Discount Users" means Class 2 Users who prior to the Closing Date, obtained a valid Commuter Identification Card issued by the Indiana Department of Transportation.

"Commuter Identification Card" means cards issued to individuals by the Indiana Department of Transportation that provide Toll Road users discounted fares between specific interchanges on the Toll Road.

"Contract Toll Rate" means the toll rate set forth in Section 3(a)(i) of Schedule 7.1 for Class 2 Users and the corresponding provisions of Schedule 7.1(a) of this Agreement (without giving effect to the limitations set forth in Section 3(e) of Schedule 7.1 of this Agreement or any of the limitations set forth in the Agreement regarding Commuter Discount Users, including without limitation, Section 12.13(e) and Section 3(e) of Schedule 7.1 of this Agreement).

"First Amendment" means that certain First Amendment to this Agreement, dated as of April 12, 2006, by and between the IFA and the Concessionaire.

"Lost Revenues" has the meaning ascribed thereto in Section 12.13.

"Original Toll Rate" means, with respect to Class 2 Users (other than Commuter Discount Users), the tolls charged on the Toll Road as set forth on Exhibit A-1 to this First Amendment, and with respect to Commuter Discount Users, the tolls charged on the Toll Road as set forth on Exhibit A-2 to this First Amendment.

#### "Permitted Investments" means:

- (i) direct obligations of, or obligations fully guaranteed by, the United States of America or any agency thereof; or
- (ii) direct and general obligations of, or obligations unconditionally guaranteed by, any state of the United States or political subdivision of such state, but only if (A) such obligations or guarantees are entitled to the full faith and credit of such state or political subdivision of such state, respectively, and such obligations provide that the state or political subdivision has the obligation to repay, in full and on a timely basis, such obligations, and (B) at the time of their purchase, such obligations are rated in any of the two highest rating categories by a nationally recognized rating agency; or
- (iii) certificates of deposit, whether negotiable or non-negotiable, of any bank, trust company or national banking association, provided that such certificates of deposit are (A) issued by a bank, trust company or national banking association having capital stock and surplus of at least \$500,000,000, (B) fully insured by the Federal Deposit Insurance Corporation or (C) fully and continuously secured by direct obligations of, or obligations unconditionally guaranteed by, the United States of America; or
- (iv) readily marketable commercial paper of corporations doing business in and incorporated under the laws of the United States of America or any state thereof given on the date of such investment a credit rating of at least P-1 by Moody's Investors Service, Inc. or A-1 by Standard & Poor's Corporation, in each case, due within 90 days after the date of the making of the investment; or
- (v) a readily redeemable "money market mutual fund" sponsored by a bank described in clause (iii) (A) above, that has and maintains an investment policy limiting its investments primarily to instruments of the types described in clauses (i) through (iv) above and having on the date of such investment total assets of at least \$1,000,000,000.

"Toll Freeze Deposit Account" has the meaning ascribed thereto in Section 12.13.

"Toll Freeze Period" means the period of time beginning on the Closing Date, and continuing until the earlier of (i) the implementation of a barrier-controlled

electronic tolling system pursuant to <u>Section 7.2(a)</u> or (ii) two (2) years from the Closing Date.

**SECTION 2.** Section 7.2(a) of the Concession Agreement is hereby amended by inserting the following sentence at the end of said Section:

"The Concessionaire agrees to provide periodic updates to the IFA regarding the progress of the implementation of the barrier-controlled electronic tolling system contemplated in this clause (a) and further agrees to provide written notice to the IFA of the date on which such system will be fully implemented (and operational) in accordance with the terms hereof as far in advance of such date as is reasonably practicable, but in no event less than 28 days prior to such date. For purposes of determining the termination of the Toll Freeze Period, a barrier-controlled electronic tolling system shall be deemed to have been implemented in accordance with this Section 7.2(a) at such time as (1) a Class 2 User fitted with an electronic transponder can traverse the entire round trip length of the Toll Road with the tolls payable by such Class 2 User being registered automatically by such transponder at each toll plaza without the need for such Class 2 User to pay such tolls in cash as it passes through such toll plazas and (2) the receipt by the IFA of written notice from the Concessionaire of such implementation (which notice may be given at the Concessionaire's discretion)."

**SECTION 3.** The proviso after the semi-colon appearing in <u>Section 12.1</u> of the Concession Agreement shall be deleted and replaced in its entirety with the following:

"; provided, however, except with respect to Claims resulting from Third Party Claims, all Claims contemplated in this <u>Section 12.1</u> shall be made in writing within a period of three years of the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations."

**SECTION 4.** Section 12.2 of the Concession Agreement is hereby amended by deleting said Section in its entirety and inserting the following new Section 12.2 in lieu thereof:

"Section 12.2. Indemnification by the IFA. To the extent permitted by Law, the IFA shall indemnify and hold harmless the Concessionaire, its Affiliates and each of its Representatives against and from any Losses actually suffered or incurred by the Concessionaire, its Affiliates or any such Representative, based upon, arising out of, related to, occasioned by or attributable to (i) any failure by the IFA or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.4(a), any breach by the IFA of its representations or warranties set forth herein, (ii) any Excluded Liabilities, (iii) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the IFA or its Representatives in connection with this Agreement, or any other matter affecting the Toll Road, (iv) any claim by other bidders or any other Person related to or in connection with the bidding process or arising from actions taken by the IFA on or after January 10, 2006 or with respect to any amendments

or modifications made to the bidding process or this Agreement as a result of the execution of the First Amendment or (v) any claim brought by any Person related to or in connection with the implementation, if any, by the IFA of a subsidy or rebate arrangement for the benefit of Class 2 Users (including Commuter Discount Users) for use of the Toll Road; provided, however, that except with respect to Claims resulting from Third Party Claims, all Claims contemplated in this Section 12.2 shall be made in writing within a period of three years of the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations."

**SECTION 5**. Article 12 of the Concession Agreement is hereby amended by inserting the following new Section 12.13 immediately following Section 12.12 appearing therein:

### "Section 12.13. Funding and Reimbursement of Lost Revenues Related to the Toll Freeze.

(a) In respect of tolls charged during the Toll Freeze Period, the IFA shall, in accordance with the mechanism set forth in this Section 12.13, pay, on a monthly basis, to the Concessionaire the difference between (A) tolls actually collected from Class 2 Users (including Commuter Discount Users) during the Toll Freeze Period (using the Original Toll Rate) and (B) tolls that would have been collected from the same Class 2 Users (including Commuter Discount Users) had the Concessionaire been entitled to charge the Contract Toll Rate less the amount of any annual renewal fees collected by the Concessionaire for Commuter Identification Cards (such difference, the "Lost Revenues"). In order to fund a portion of or all of the payments required to be made by the IFA pursuant to this Section 12.13 in respect of Lost Revenues, the Concessionaire shall be entitled to (and the IFA hereby acknowledges and agrees with such allocation notwithstanding anything to the contrary set forth in Section 2.1 of this Agreement), on the Closing Date, apply \$60,000,000 from the payment of the Rent to fund the Toll Freeze Deposit Account (as defined below). The Concessionaire shall deposit such amount in a separate, interest-bearing account, in its own name, at a bank in Northern Indiana (the "Toll Freeze Deposit Account"). The Concessionaire shall have exclusive dominion and control over the Toll Freeze Deposit Account and the funds on deposit therein (including with respect to any withdrawals from such Toll Freeze Deposit Account in accordance with the terms of Section 12.13(c)). The Concessionaire's rights with respect to any funds on deposit in the Toll Freeze Deposit Account shall be in addition to any of the Concessionaire's rights and remedies under this Agreement that may be available to it in respect of any failure by the IFA to comply with its obligations under this Agreement; provided, however, that the Concessionaire, other than as set forth below, shall use the Toll Freeze Deposit Account solely to fund reimbursement of Lost Revenues and shall not use (and the IFA shall not request, authorize or direct the Concessionaire to use) the funds in such Toll Freeze Deposit Account for any other purpose, including the payment of Concession Compensation or other damages or reimbursement to which the Concessionaire may be entitled under the terms of this Agreement; provided, that, (i) with the prior written consent of the IFA, at any time during the Toll Freeze Period and (ii) after the payment of all Lost Revenues during the Toll Freeze Period, in each case, any funds on deposit in the Toll Freeze Deposit Account may be used to satisfy any amounts owed to the Concessionaire pursuant to <u>Section</u> <u>3(e)(ii)</u> of <u>Schedule 7.1</u>. The funds in the Toll Freeze Deposit Account shall only be invested in Permitted Investments.

- (b) Upon the termination of the Toll Freeze Period and following the implementation of the tolls at the Contract Toll Rate, the Concessionaire shall, within 10 Business Days, disburse the funds remaining in the Toll Freeze Deposit Account, if any, after the application of all payments of Lost Revenues owed to the Concessionaire pursuant to this Section 12.13, to the IFA, including all interest accrued with respect to such funds and remaining on deposit in the Toll Freeze Deposit Account at such time, net of any applicable taxes and other costs payable in connection therewith and any costs described in Section 3(e)(ii) of Schedule 7.1.
- (c) At the IFA's request, the Concessionaire shall provide the IFA with copies of bank statements showing income and disbursements, if any, of the funds in the Toll Freeze Deposit Account. The Concessionaire shall notify the IFA at such time as the balance in the Toll Freeze Deposit Account first falls below \$20 million. Within fifteen (15) Business Days after the end of each month during the Toll Freeze Period, the Concessionaire shall deliver to the IFA a schedule detailing all of the Class 2 User traffic (including Commuter Discount User traffic) during the previous month which schedule shall include the calculation of the Lost Revenues incurred based on such traffic. Immediately following the delivery of such schedule, the Concessionaire may, to the extent of available funds therein, without any consent, approval or confirmation, withdraw the Lost Revenues amount set forth in such schedule for such month from the Toll Freeze Deposit Account. The IFA shall have six months after receipt of such schedule to either agree to or object to the calculation of such Lost Revenues amount for such month. During such six month period, in addition to the audit rights set forth in Article 8, the Concessionaire will make representatives of the Concessionaire available upon reasonable notice and at reasonable times to answer questions related to the Lost Revenues amount and deliver any additional information that the IFA may reasonably request in order to verify the calculation of such Lost Revenues amount for such month. If the IFA objects to the calculation of such Lost Revenues amount, the parties shall resolve the dispute as provided in Article 19, provided that any arbitration panel shall consist of arbitrators that are certified public accountants from independent, nationally recognized accounting firms (which may not be the existing accounting firm of the IFA or the Concessionaire) and nationally recognized traffic consultants (with such panel to include at least one arbitrator from each category). In the event that the IFA prevails in its dispute, as the result of the procedures set forth in Article 19, then within ten (10) days after such final determination, the Concessionaire will deposit the disputed amount back in the Toll Freeze Deposit Account or, if such final determination occurs after the end of the Toll Freeze Period and the implementation of the tolls at the Contract Toll Rate, the Concessionaire shall directly reimburse the IFA.
- (d) In the event that on any date on which the Concessionaire shall be entitled to receive a payment from the IFA in respect of Lost Revenues in accordance with this Section 12.13 the funds on deposit in the Toll Freeze Deposit Account are insufficient to compensate the Concessionaire in full, the IFA, within ten (10) Business Days following

the provision of notice thereof by the Concessionaire to the IFA (which notice may be provided as part of the monthly schedule described in clause (c) above), shall pay to the Concessionaire, in immediately available funds, any such amounts not funded with proceeds from the Toll Freeze Deposit Account; provided, that, with respect to the first time such shortfall notice is provided to the IFA, the IFA shall have thirty (30) Business Days to pay the Concessionaire the amount not funded with the proceeds of the Toll Freeze Deposit Account if the Concessionaire shall not have advised the IFA that the balance in the Toll Freeze Deposit Account was at or below \$20 million at least fifty (50) calendar days prior to the delivery to the IFA of the notice advising the IFA of the need for the IFA to fund a shortfall. Other than as expressly provided for in this clause (d) in respect of the source of payment, the mechanism set forth in clause (c) above shall remain in full force and effect."

(e) During the Toll Freeze Period, the Concessionaire agrees to honor all Commuter Identification Cards used by Commuter Discount Users and shall administer the use of the Commuter Identification Cards consistent with the historical practices utilized by the Toll Road prior to the Closing Date, including, but not limited to, replacing lost or stolen Commuter Identification Cards and collecting the \$25 annual fee for the use of the Commuter Identification Cards (which annual fee shall be considered Toll Road Revenues and retained by the Concessionaire). The Concessionaire shall not be required to issue any new Commuter Identification Cards (other than during the Toll Freeze Period, annual renewals of Commuter Identification Cards to persons who held such cards on or prior to the Closing Date, or replacing lost or stolen Commuter Identification Cards). In recognition of the Concessionaire's status as the Operator of the Toll Road, the IFA shall not, and shall cause the Indiana Department of Transportation not to, pay for any advertisements with respect to the availability of new or renewed Commuter Identification Cards following the date of this First Amendment. Following the Closing Date the IFA shall not, and shall cause the Indiana Department of Transportation not to, issue any Commuter Identification Cards.

#### **SECTION 6**. Schedule 7.1 to the Concession Agreement is hereby amended by:

- (i) deleting the text "The maximum toll levels from Class 2 Users" appearing in Section 3(a)(i) of such Schedule and inserting the text "Except as provided in Section 3(e) hereof, the maximum toll levels from Class 2 Users" in lieu thereof; and
- (ii) inserting the following new <u>Section 3(e)</u> immediately following <u>Section 3(d)</u> appearing therein:
- "(e) Limitations on Toll Increases for Class 2 Users (including Commuter Discount Users). The following limitations on toll increases shall apply to Class 2 Users (including Commuter Discount Users):
- (i) Period Prior to the Termination of the Toll Freeze Period. Notwithstanding anything to the contrary set forth herein, during the Toll Freeze Period, the toll levels applicable to Class 2 Users (including Commuter Discount Users) may not be increased above the Original Toll Rate.

(ii) Period After the Termination of the Toll Freeze Period. Immediately upon the termination of the Toll Freeze Period, (A) the Concessionaire shall be entitled to increase the tolls applicable to Class 2 Users (including Commuter Discount Users) to the Contract Toll Rate without the approval or consent of the IFA, any other governmental entity or any other Person and (B) the Commuter Discount Cards shall no longer be valid and all Commuter Discount Users will pay the tolls applicable to Class 2 Users. The right of the Concessionaire to increase the tolls in the manner contemplated in the immediately preceding sentence shall be without prejudice and shall not otherwise hinder, limit or affect any of its rights pursuant to this Schedule 7.1, including, without limitation, any right to further increase such tolls in accordance with Section 3(a) of this Schedule 7.1. Prior to the implementation of the increase contemplated in the immediately preceding sentence, the Concessionaire and the IFA shall cooperate in good faith regarding the implementation of subsidy or rebate arrangements that may be implemented by the IFA for the benefit of Class 2 Users of the Toll Road, including providing certain nonproprietary know-how and information relating to direct and indirect costs that may result from such subsidy or rebate arrangement and otherwise complying with any reasonable request by the other party, in each case, to the extent permitted by applicable Law and any applicable contractual restrictions and consistent with the internal policies of the Concessionaire and the IFA provided that (A) any such arrangement shall be solely between the IFA, such Class 2 Users and any third party payment processor and shall not impact the Concessionaire's rights to charge tolls in accordance with this Schedule 7.1 or any other rights of the Concessionaire pursuant to this Agreement or otherwise adversely impact Toll Road Operations or the receipt of Toll Road Revenues, (B) any direct or indirect costs resulting from such arrangement shall be payable by the IFA, and to the extent that the Concessionaire shall have incurred any such costs directly or indirectly as a result of such arrangement (including, without limitation, any increase in operating costs of the Concessionaire as a result of such arrangement (including as a result of the issuance of transponders or similar requirements that are contemplated by such arrangements)), the IFA shall pay, or to the extent already paid by the Concessionaire, reimburse the Concessionaire for such costs promptly upon demand therefor, (C) such cooperation shall not limit, reduce or hinder any of the Concessionaire's rights under this Agreement and (D) any such arrangements shall be in effect so long as the IFA is providing a subsidy or rebate to Class 2 Users. The Concessionaire's obligation to cooperate under this clause (ii) shall be contingent upon payment by the IFA to the Concessionaire any Concession Compensation related to any subsidy or rebate arrangements contemplated by this clause (ii) (including, without limitation, compensation for any decrease in Toll Road Revenues resulting from the establishment or operation of such arrangements).

**SECTION 7.** In <u>Section 16.4</u> of the Agreement, the first sentence shall be amended by deleting the phrase "Upon the termination of this Agreement prior to the end of the Term" and replacing it with the phrase "Upon the termination of this Agreement at or prior to the end of the Term".

**SECTION 8.** This First Amendment is limited as specified and shall not constitute a modification, acceptance or waiver of any other provision of the Concession Agreement. The parties hereto reconfirm the agreements, rights and remedies as set forth in the Concession Agreement.

- **SECTION 9.** This First Amendment may be executed in multiple counterparts, each of which will be considered an original. Facsimile signatures of original signatures shall be deemed original signatures. Only one counterpart of this First Amendment executed by the party against which it will be enforced need be provided to evidence this First Amendment.
- **SECTION 10**. This First Amendment shall be governed by, and interpreted and enforced in accordance with, the laws in force in the State of Indiana (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).
- SECTION 11. From the date on which this First Amendment shall have been executed by the IFA and the Concessionaire, all references in the Concession Agreement to the Concession Agreement shall be deemed to be references to the Concession Agreement as modified hereby.
- **SECTION 12.** The parties acknowledge and agree that the requirement set forth in Section 2.3 of the Agreement shall be satisfied so long as the Cash Deposit or LOC is received by the IFA by 5:00 PM (Indianapolis time) on April 14, 2006.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date set forth above.

"IFA"

#### INDIANA FINANCE AUTHORITY

By: Oliver & Shally
Printed: Charles E. Schalliol
Title: Chairman
"CONCESSIONAIRE"
ITR CONCESSION COMPANY LLC
Ву:
Printed:
Title:
Ву:
Printed:
Title:

Signature Page to First Amendment

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date set forth above.

"IFA"

#### INDIANA-FINANCE AUTHORITY

Ву:
Printed:
Title:
"CONCESSIONATRE"
TIR CONCESSION COMPANY LLC
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By: The Cil
Printed: STONION ALLON
Title: N. RECTOR
By: Jumpolefunt
Printed: JOSE M. LOPEZ DE FUENTE
Title: DIRECTOR

Signature Page to Pirst Amendment

A) Barrier System (Tolls will be charged as indicated below only upon entry and exit.)

			Class 2
	Direction	Entry	Two Axle
	o,	9	Vehicles and
	Travel	Exit	Motorcycles
Plaza 1 West Point			
	WB WB	ENTRY/EXIT	\$0.50
	ЕВ	ENTRY/EXIT	0.50
Plaza 5 Calumet Ave			
	WB WB	EXIT	\$0.25
	EB	ENTRY	0.25
Plaza 10 Cline Ave			
	8	EXIT	\$0.25
	EB	ENTRY	0.25
Plaza 17 I-65/Gary East			
	æ	ENTRY	\$0.15
	æ	EXIT	0.15
Plaza 21 Lake Station/I-94			
	¥8	ENTRY	\$0.30
	EB	EXIT	0.30
Plaza 23 Willow Creek Rd.			
	8	ENTRY	\$0.30
	EB	EXIT	0.30

B) Ticket System
Class 2 (Two Axie Vehicles Including Motorcycles)
Through Trip Toll Rate: 34.65

153	144	121	107	101	96	92	83	77	72	49	39	31		
4.15	3.70	3.05	2.65	2.50	2.35	2.20	2.00	1.75	1.55	1.00	0.65	0.45	Barrier	Portage
3.85	3.40	2.65	2.30	2.10	1.95	1.75	1.55	1.30	1.10	0.65	0.40	Chesterton	_ Valparaiso -	31
3.60	3.20	2.50	2.05	1.85	1.70	1.65	1.30	1.10	0.95	0,40	City	Michigan	39	,
3.20	2.75	2.10	1.65	1.50	1.40	1.30	1.10	0.90	0.65	9	Laporte	49		
2.65	2.20	1.55	1.10	0.90	0.75	0.70	0.45	0.35	West	South Bend	72	ı		
2.40	2.00	1.30	0.95	0.70	0.60	0.55	0.35	Notre Dame	South Bend	77	•			
2.20	1.80	1.10	0.75	0.55	0.50	0.40		Mishawaka	83					
2.00	1.65	0.90	0.55	0.40	0.35		Fikhari	92	-					
1.70	1.45	0.75	0.40	0.35	East	Elkhart	96	•						
1.65	1.30	0.65	0.35	Goshen	Bristol -	101								
1.45	1.10	0.45		Middlebury	107	•								
1.10	0.75	LaGrange	Howe	121	•									
0.45		Angola	144											
Point	East	153												

# Indiana Toll Road

# Existing Toll Schedule By Barrier and Plaza for Commuter Discount Users

## A) Barrier System

(Tolls will be charged as indicated below only upon entry and exit.)

			Type A	Type B
			Commuter Discount Lisers	Commuter Discount Lisers
	Direction	Entry	Two Axle	Two Axle
	o,	٥	Vehicles including	Vehicles including
	Travel	Exit	Motorcycles	Motorcycles
Plaza 1 West Point				
	WB	<b>ENTRY/EXIT</b>	\$0.30	\$0.35
	EB	ENTRY/EXIT	0.30	0.35
Plaza 5 Calumet Ave				
	¥8	EXIT	\$0.10	\$0.15
	EB	ENTRY	0.10	0.15
Plaza 10 Cline Ave				
	WB	EXIT	\$0.10	\$0.15
	EB	ENTRY	0.10	0.15
Plaza 17 I-65/Gary East				
	WB	ENTRY	\$0.05	\$0.05
	EB	EXIT	0.05	0.05
Plaza 21 Lake Station/I-94				
	WB	ENTRY	\$0.15	\$0.15
	EB	EXIT	0.15	0.15
Plaza 23 Willow Creek Rd.				
	WB	ENTRY	\$0.15	\$0.15
	EB	EXIT	0.15	0.15

For the Barrier System, Type A Commuter Discount Users can utilize only one toll collection point and Type B Commuter Discount Users can utilize only two collection points. If a Commuter Discount User utilizes both the ticket and the barrier system for a trip, then they will be considered a Type B Commuter Discount User for the barrier system and pay the same tolls as Class 2 Users in the ticket system.

## B) Ticket System

Class 2 (Two Axle Vehicles including Motorcycles)

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